

## Comptroller of the Currency, Treasury

## § 28.10

(1) Files an application, notice, or report with the FRB to:

(i) Establish, open, close, or relocate a foreign branch; or

(ii) Acquire or divest of an interest in, or close, an Edge corporation, Agreement corporation, foreign bank, or other foreign organization; or

(2) Opens, closes, or relocates a foreign branch, and no application or notice is required by the FRB for such transaction.

(b) *Other applications and notices accepted.* In lieu of a notice under paragraph (a)(1) of this section, the OCC may accept a copy of an application, notice, or report submitted to another Federal agency that covers the proposed action and contains substantially the same information required by the OCC.

(c) *Additional information.* A national bank shall furnish the OCC with any additional information the OCC may require in connection with the national bank's foreign operations.

EFFECTIVE DATE NOTE: At 68 FR 70699, Dec. 19, 2003, § 28.3, was amended by revising paragraphs (a)(1)(i) and (a)(2), effective Jan. 20, 2004. For the convenience of the user, the revised text is set forth as follows:

### § 28.3 Filing requirements for foreign operations of a national bank:

(a) \* \* \*

(1) \* \* \*

(i) Establish or open a foreign branch;

\* \* \* \* \*

(2) Opens a foreign branch, and no application or notice is required by the FRB for such transaction.

\* \* \* \* \*

### § 28.4 Permissible activities.

(a) *General.* Subject to the applicable approval process, if any, a national bank may engage in any activity in a foreign country that is:

(1) Permissible for a national bank in the United States; and

(2) Usual in connection with the business of banking in the country where it transacts business.

(b) *Additional activities.* In addition to its general banking powers, a national bank may engage in any activity in a foreign country that is permissible

under the FRB's Regulation K, 12 CFR part 211.

(c) *Foreign operations guarantees.* A national bank may guarantee the deposits and other liabilities of its Edge corporations and Agreement corporations and of its corporate instrumentalities in foreign countries.

### § 28.5 Filing of notice.

(a) *Where to file.* A national bank shall file any notice or submission required under this subpart with the Office of the Comptroller of the Currency, International Banking and Finance, 250 E Street SW, Washington, DC 20219.

(b) *Availability of forms.* Individual forms and instructions for filings are available from International Banking and Finance.

EFFECTIVE DATE NOTE: At 68 FR 70699, Dec. 19, 2003, § 28.5, was amended by revising paragraphs (a) and (b), effective Jan. 20, 2004. For the convenience of the user, the revised text is set forth as follows:

### § 28.5 Filing of notice.

(a) *Where to file.* A national bank shall file any notice or submission required under this subpart with the appropriate supervisory office of the OCC.

(b) *Availability of forms.* Individual forms and instructions for filings are available from the appropriate supervisory office of the OCC.

## Subpart B—Federal Branches and Agencies of Foreign Banks

### § 28.10 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued pursuant to the authority in the International Banking Act of 1978 (IBA), 12 U.S.C. 3101 *et seq.*, and 12 U.S.C. 93a.

(b) *Purpose and scope.* This subpart implements the IBA pertaining to the licensing, supervision, and operations of Federal branches and agencies in the United States. For corporate procedures pertaining to Federal branches and agencies, refer to 12 CFR part 5.

[61 FR 19532, May 2, 1996, as amended at 61 FR 60387, Nov. 27, 1996]

EFFECTIVE DATE NOTE: At 68 FR 70699, Dec. 19, 2003, § 28.10, was amended by revising the heading in paragraph (b) and adding a new paragraph (c), effective Jan. 20, 2004. For the convenience of the user, the revised and added text is set forth as follows:

## § 28.11

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### § 28.10 Authority, purpose, and scope.

\* \* \* \*

(b) Purpose. \* \* \*

(c) *Scope.* This subpart applies to all Federal branches and agencies of foreign banks. Nothing in the OCC's rules relieves a Federal branch or agency from complying with requirements that are imposed by the FRB under Regulation K (12 CFR part 211) or otherwise imposed in accordance with applicable law.

### § 28.11 Definitions.

For purposes of this subpart:

(a) *Affiliate* means any entity that controls, is controlled by, or is under common control with another entity.

(b) *Agreement corporation* means a corporation having an agreement or undertaking with the FRB under section 25 of the FRA, 12 U.S.C. 601 through 604a.

(c) *Capital equivalency deposit* means a deposit by a Federal branch or agency in a member bank as described in section 4 of the IBA, 12 U.S.C. 3102(g).

(d) *Change the status of an office* means conversion of a:

(1) State branch or state agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch, limited Federal branch, or Federal agency;

(2) Federal agency into a Federal branch or limited Federal branch;

(3) Federal branch into a limited Federal branch or Federal agency; or

(4) Limited Federal branch into a Federal branch or Federal agency.

(e) *Control.* An entity controls another entity if the entity directly or indirectly controls or has the power to vote 25 percent or more of any class of voting securities of the other entity or controls in any manner the election of a majority of the directors or trustees of the other entity.

(f) *Edge corporation* means a corporation that is organized under section 25A of the FRA, 12 U.S.C. 611 through 631.

(g) *Establish a Federal branch or agency* means to:

(1) Open and conduct business through a Federal branch or agency;

(2) Acquire directly or indirectly through merger, consolidation, or similar transaction with another foreign

bank, the operations of a Federal branch or agency that is open and conducting business;

(3) Acquire a Federal branch or agency through the acquisition of a foreign bank subsidiary that will cease to operate in the same corporate form following the acquisition;

(4) Change the status of an office; or

(5) Relocate a Federal branch or agency within a state or from one state to another.

(h) *Federal agency* means an office or place of business, licensed by the OCC and operated by a foreign bank in any state, that may engage in the business of banking, including maintaining credit balances, cashing checks, and lending money, but may not accept deposits from citizens or residents of the United States. Obligations may not be considered credit balances unless they are:

(1) Incidental to, or arise out of the exercise of, other lawful banking powers;

(2) To serve a specific purpose;

(3) Not solicited from the general public;

(4) Not used to pay routine operating expenses in the United States such as salaries, rent, or taxes;

(5) Withdrawn within a reasonable period of time after the specific purpose for which they were placed has been accomplished; and

(6) Drawn upon in a manner reasonable in relation to the size and nature of the account.

(i) *Federal branch* means an office or place of business, licensed by the OCC and operated by a foreign bank in any state, that may engage in the business of banking, including accepting deposits, that is not a Federal agency as defined in paragraph (h) of this section.

(j) *Foreign bank* means an organization that is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, and that engages directly in the business of banking in a foreign country.

(k) *Foreign business* means any entity, including a corporation, partnership, sole proprietorship, association, foundation or trust that is organized under the laws of a foreign country, or any